IN THE

# Supreme Court of the United States

OCTOBER TERM, 1939.

No. 251.

JAMES STEWART & CO., INC.,

*Appellant,*

*against*

KATHERINE SADRAKULA, as administratrix of the goods, chattels and credits which were of NICHOLAS SADRAKULA, deceased,

*Appellee.*

Appeal from the Supreme Court of the State of New York.

## BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

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JAMES STEWART & CO., INC.,
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against
KATHERINE SADRAKULA, as administratrix of the goods, chattels and credits which were of Nicholas Sadrakula, deceased,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

## BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

### Statement.

The motion to dismiss or affirm is predicated upon the alternative claims that the judgment below did not necessarily rest upon the determination of any Federal question, or, if it did, that the question involved is not substantial.

We will confine ourselves to answering the arguments advanced in support of those contentions.

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NOTE: All references to the record are to the pages of the printed case on appeal in the Court of Appeals, included in the certified transcript of the record on file with the Clerk of this Court.

All italics herein are supplied.

## I.

**Appellant's contention that the New York Labor Law[1] is repugnant to Section 8, Article 1 of the Constitution of the United States,[2] when applied, as it was by the Court below, to the construction of a Federal public building, upon land within exclusive Federal jurisdiction, necessarily involves the determination of Federal questions.**

As appears from appellee's "Preliminary Statement," the facts pertinent to the present question are not in dispute.

Pursuant to a contract with the Treasury Department, dated November 9, 1934 (R. 110), appellant, as general contractor, was engaged in erecting a post office building on a tract of land in New York City, which had been purchased by the Federal Government in 1931 for that purpose, with the consent of the State Legislature (R. 17, 18). Appellee's decedent, an employee of a sub-contractor, while working therein on October 24, 1935, fell from the basement to the sub-basement, receiving injuries from which he died (R. 18).

In this action, which was brought under the New York "death statute"[3] (Decedent's Estate Law, Sec. 130; Consolidated Laws of New York, Chap. 13, Sec. 130), to recover damages for his death, the *pleadings* charged appellant with liability upon the ground that his death was caused by appellant's "negligence" in failing to perform various duties which, it was alleged, were imposed upon it, for his benefit, by the common law and by certain State statutes and municipal ordinances (R. 6, 13). Upon the trial, however, all claims of the violation of any duties imposed by the common law, or by municipal ordinances, or any State statute, other than paragraph 1 of Section 241 of the New York Labor Law,[4] were *expressly withdrawn* (R. 96, 97, 98, 110, 112)

[1] Appendix, p. 17.
[2] Appendix, p. 18.
[3] Appendix, p. 18.
[4] Appendix, p. 17.

and appellant was charged with liability *solely* upon the ground that, in the construction of that building, the statute imposed upon it, as general contractor, the duty of keeping the tiers of structural steel "thoroughly planked over" for decedent's protection.

Appellant contended that that statute, which was an exercise of the State police powers, could not be validly applied to the construction of that building, under Article 1, Section 8 of the Federal Constitution, for the reason that the construction thereof was an activity of the Federal Government, conducted in the exercise of its sovereign powers, upon land within its exclusive jurisdiction (R. 98, 99, 112, 113).

That this question was properly raised is not questioned by appellee, but it is claimed that under the applicable State statutes the United States did not acquire *territorial* jurisdiction until after the accident and that, therefore, no Federal question is involved.

No claim is made that the decision of the Court below rested upon that ground, nor is there anything in the record to indicate that it did. In the discussion of appellant's motions to dismiss and for a directed verdict at the trial, that question was not raised (R. 98, 99, 100, 101, 102, 112, 113) and, in its decision, the Trial Court gave no intimation of the reason for its decision on that question. (R.[1] 122). The Appellate Division, however, in affirming the judgment of the Trial Court, did so upon the specific ground that the State statute continued in effect in "this Federal reservation" because it had been enacted before cession of jurisdiction and had not been "displaced by Congress" (R.[2] 131; 254 N. Y. App. Div. 892). As the affirmance by the Court of Appeals was without opinion (280 N. Y. [Adv. #1] 157, mem.), the inference, if any, is that it adopted the view of the Appellate Division. Clearly, therefore, the record does not suggest that the judgment below was predicated upon the ground now urged by appellee.

However, even if the decision of the Court of Appeals had been *placed* upon that ground, this Court would not thereby

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[1] Appendix, p. 19.
[2] Appendix, p. 20.

have been deprived of jurisdiction, because that question, being one regarding the extent of the jurisdiction of the United States, is, in itself, a Federal one, reviewable by this Court.

*Silas Mason Co.* v. *Tax Comm. of Washington*, 302 U. S. 186, 197, and cases there cited.

It is also said that the Labor Law does not "create a cause of action," but is merely, in effect, a rule of evidence by which a standard for determining the care required by the common law is prescribed.

That assertion is contrary to the settled law of New York, where it has been uniformly held that violation of a statute, which imposes a positive duty for the benefit of a particular class, creates a cause of action in favor of any member of that class who is injured through its violation, regardless of "negligence." The *duty* is created by the statute, regardless of the existence of *any* duty at common law.

*Willy* v. *Mulledy*, 78 N. Y. 310, 314;
*Racine* v. *Morris*, 201 N. Y. 240, 244;
*Ambery* v. *Kinley*, 214 N. Y. 531, 534, 535;
*McNamara* v. *Eastman Kodak Co.*, 220 N. Y. 180, 182, 183;
*Lotocka* v. *Elevator Supplies Co.*, 246 N. Y. 295, 296;
*De Haen* v. *Rockwood Sprinkler Co.*, 258 N. Y. 350, 353, 354, 355;
*Schmidt* v. *Merchants Dispatch Trans. Co.*, 270 N. Y. 287, 303, 304, 305, 306.

The Labor Law is such a statute. It imposes absolute, non-delegable duties upon those in control of the construction of buildings, for the protection of all persons engaged in the work. Civil liability for injuries or death, resulting from breach thereof, follows by operation of law.

*Berla* v. *Zambetti*, 235 N. Y. App. Div. 464, 465;
*Guglielmo* v. *Church Eng'g Co.*, 258 N. Y. 566, mem.;

*Vollstedt* v. *Mollar, Inc.*, 238 N. Y. App. Div. 705, 707;

*Caminiti* v. *Matthews Construction Co.*, 241 N. Y. App. Div. 879.

Under New York practice such "cause of action" may be asserted under general allegations of "negligence" and may be relied upon although not "separately stated."

*Schmidt* v. *Merchants Dispatch Trans. Co.*, 270 N. Y. at pp. 298, 299, 303, 304, 305, 306.

Appellee's pleadings were in that form, but, at the trial, all charges of "common law" negligence were specifically withdrawn and the case was submitted solely under the statute (R. 112).

Clearly, therefore, the judgment appealed from rests upon a decision sustaining the validity of that State statute against appellant's contention that its application herein is repugnant to the Federal Constitution. That decision necessarily involved the determination of three Federal questions:

a. Whether the place where the alleged statutory violation occurred was within the exclusive territorial jurisdiction of the United States;

b. If so, whether that State statute "continued in effect" therein so as to be effective to control the manner in which appellant was required to perform its contract with the United States;

c. Whether the Act of Congress of February 1, 1928, Chapter 15 (U. S. Code, Title 16, Sec. 457[1]), may properly be construed as *expressly* adopting for such Federal territory a State statute of that type so as to render it applicable to a Federal activity therein.

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[1] Appendix, p. 20.

## II.

## The Federal questions involved are substantial.

We understand the rule to be that a Federal question, which is obviously without merit, or clearly unsound under the previous decisions of this Court, is not deemed substantial.

> *Zucht* v. *King*, 260 U. S. 174, 176, 177;
> *California Water Service Co.* v. *Redding*, 304 U. S. 252, 255.

We have been unable, after diligent search, to find any case in which the courts of New York have been called upon to construe the statutes upon which appellee relies in support of her contention regarding territorial jurisdiction; nor are we aware of any decision of this Court in which a State building regulation, similar in import to the New York Labor Law, has been held applicable to the conduct of a Federal project in Federal territory.

### A.

### *As to Territorial Jurisdiction.*

Concededly, the land in question, an entire block in New York City, was *purchased* at private sale by the United States in 1931, with the *consent* of the Legislature, for the purpose of erecting a post office thereon (R. 17, 18). It is claimed, however, that *jurisdiction* thereof was not acquired until December, 1935, because certified copies of the title papers were not filed with the Secretary of State of New York until then.

This claim is based upon Section 211 of the General Municipal Law[1] (Consolidated Laws of New York, Chap. 24, Sec. 211; L. 1909, Chap. 29, Sec. 211) and Section 52 of the State Law[2] (Consolidated Laws of New York, Chap. 57, Sec. 52; L. 1909, Chap. 59, Sec. 52).

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[1] Appendix, p. 21.
[2] Appendix, p. 22.

Sections 210, 211 and 212 of the General Municipal Law constitute a separate article thereof and are derived from a single Act (L. 1899, Chap. 242, Secs. 1, 2, 3). The only change was the addition of the words "or village" following "in any city" in the middle of Section 210, and following "in any such city" at the end thereof (L. 1907, Chap. 375, Sec. 1).

By Section 210 its application is limited to the acquisition, in municipalities, of "one or more pieces of land *not exceeding two acres in extent.*" Here, there is no evidence as to the size of the tract involved (R. 18).

The first *general* statute on the subject (L. 1896, Chap. 391) from which Article 4 (Secs. 50-57,[1] inclusive) of the State Law is derived (McKinney's Consolidated Laws, Book 56, Sec. 50 and footnote) granted the general "consent" of the State to the "purchase" by the United States of "*any* tract, piece or parcel of land * * * situate upon or adjacent to the navigable waters thereof," for certain specified purposes, including post offices, and provided that the title papers thereof should be recorded in the office of the appropriate officer of the *county* wherein the land was situated.

By subsequent amendments the words "situate upon or adjacent to the navigable waters thereof" were deleted (L. 1910, Chap. 109, Sec. 1) and further "purposes" added (L. 1911, Chap. 527, Sec. 1; L. 1917, Chap. 819, Sec. 1; L. 1922, Chap. 14). State Law, Section 50, is identical with Section 1 of that Act of 1896 as so amended (L. 1896, Chap. 391; Sec. 1).

Prior to that time all "consents" and "cessions" were by special acts (State Law, Secs. 20 *et seq.*). Obviously, therefore, when that general statute was enacted, it was necessary to provide, not only for property to be *subsequently* acquired, but also for that already owned, but as to which there had been neither consent nor cession. This is borne out by the "saving clause" at the conclusion of Article 3 of the State Law (Sec. 37),[2] in which the previous *special* acts of cession are re-enacted and confirmed, which, in turn, is derived from a previous State Law (L. 1892, Chap. 678, Sec. 37). It is

[1] Appendix, p. 22.
[2] Appendix, p. 24.

there provided that the adoption of the consolidation of those special acts shall not be construed as ceding any territory, or the jurisdiction thereof, "not so ceded" by the special acts thereby repealed.

Although apparently never directly *decided*, judicial opinion, as expressed in this Court and in the Court of Appeals of New York, seems to have been uniform that Clause 17 of Section 8, Article 1 of the Federal Constitution, *proprio vigore*, transfers jurisdiction to the United States in those cases in which it *purchases* land, with the *consent* of the Legislature, for the purposes therein described. On the other hand, as to lands *otherwise* acquired, the United States may acquire jurisdiction only by cession from the State.

> *Ft. Leavenworth R. Co.* v. *Lowe*, 114 U. S. 525, 537, 538, 539;
> *Benson* v. *United States*, 146 U. S. 325, 330, 331;
> *United States* v. *Unzeuta*, 281 U. S. 138, 142;
> *Surplus Trading Co.* v. *Cook*, 281 U. S. 647, 652;
> *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 142;
> *Silas Mason Co.* v. *Tax Comm. of Washington*, 302 U. S. 186, 197;
> *Farley* v. *Scherno*, 208 N. Y. 269, 271;
> *People* v. *Hillman*, 246 N. Y. 467, 479.

Viewed in that light, it becomes apparent that Section 56 of the State Law grants the consent contemplated by Clause 17 as to future *purchases*. Section 51 provides a method by which title may be acquired when "purchase" in the usual sense, i. e., by mutual agreement, is impossible. Section 52 then *authorizes* the Governor, "if he deems it proper," to execute formal cessions of jurisdiction, upon the filing, with the Secretary of State, of certified copies "of the record or transfer" of any tracts of land which "have been acquired" for the specified purposes.

It is, we submit, inconceivable that Section 52 was intended to apply to land *purchased*, as to which *consent* had been given by Section 50, as well as to land *otherwise* acquired. To so construe it, gives the Executive *discretionary* authority to nullify the legislative consent. On the other hand,

if construed to apply only to land *otherwise* acquired, the entire act is consistent and carries out the undoubted purpose of providing a uniform method by which the United States *would* acquire jurisdiction in all of the cases contemplated by Clause 17 and *might* acquire like jurisdiction in other cases, if the executive departments of both governments deemed it proper.

*Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 528.

It may, however, be argued that Clause 17 does not *require* the Federal Government to accept jurisdiction and that, therefore, Section 50 is a mere tender thereof, which must be accepted in the manner specified in Section 52.

*Cf. Atkinson* v. *State Tax Commission of Oregon*, 303 U. S. 20, 23.

The right of the United States to reject the jurisdiction conferred upon it by Clause 17 seems to have been suggested for the first time in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 148. It seems highly improbable, therefore, that the New York Legislature had that thought in mind in 1896 when this statute was first enacted.

In the instant case, there is not merely a lack of evidence that the United States intended to decline jurisdiction, from which the intention to accept it is to be presumed (*Silas Mason Co.* v. *Tax Commission*, 302 U. S. at p. 207; *Atkinson* v. *State Tax Commission*, 303 U. S. at p. 23), but it is clear that the Treasury Department believed that jurisdiction had been acquired.

Unlike the *Mason* and *Atkinson* cases, here the land was purchased as the site of a "public building." Therefore, the provisions of U. S. Code, Title 40, Section 255,[1] applies thereto. The expenditure of public money thereon was thereby prohibited "until the consent of the legislature to such purchase" had been given.

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[1] Appendix, p. 24.

In an opinion regarding that statute, which is derived from a Resolution of Congress of September 11, 1841 (5 Stat. at L. 468), the Attorney General of the United States said in part:

> "This does not require the cession of jurisdiction, either exclusive or otherwise. When the Legislature consents to the purchase, the 8th Section of the Constitution provides for exercising exclusive legislation, which is full jurisdiction. * * *. In the Act in question, the 'consent' of the Legislature to the purchase is complete; and having been given, the Constitution carries with it the authority and jurisdiction required by the resolution of 1841."
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> (9 Opin. Attorneys General, 129, 130.

Here, appellant contracted with the Treasury Department to construct the building on November 9, 1934 (R. 110), more than a year before the papers referred to in State Law, Section 52, were filed.

That contract contained provisions relating to the non-applicability of municipal ordinances and of State and municipal building regulations to work conducted "inside the Government's lot lines" (Defendant's Exhibit A for Iden,[1] R. 121; Assignment of Errors, Item 6), which are, we submit, utterly inconsistent with an intention that the State should retain jurisdiction.

Referring again to the provisions of the General Municipal Law, Section 211, it is noteworthy that it was first enacted (L. 1899, Chap. 242) when the general "consent" (L. 1896, Chap. 391) was limited to lands "situated on or adjacent to" navigable waters. Obviously, such consent was of little practical value as to sites for post offices and office buildings. Hence, this grant thereof for those purposes in cities. Its second section (now General Municipal Law, Sec. 211, without change) is substantially equivalent to Sections 52 and 54 of the State Law, except that the cession of jurisdiction follows from the filing of certified copies of the title papers, without any action by the governor.

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[1] Appendix, p. 24.

We submit that those provisions, if applicable despite their limitation to tracts of not more than two acres, are subject to the same construction which we have urged regarding Sections 50 and 52 of the State Law.

We believe, therefore, that appellant's contention that the locus of the accident was within Federal jurisdiction, presents a question which neither lacks merit, nor is contrary to previous decisions of this Court, but is, on the contrary, a substantial Federal question which this Court should determine, or, if it deems necessary, remand to the State Court for that purpose.

*Honeyman* v. *Hanan*, 300 U. S. 14, 26.

**B.**

***As to the Applicability of the Labor Law in Federal Territory.***

That laws which regulate the personal and property rights of the inhabitants, termed "municipal," continue in effect after change of sovereigns; whereas those termed "political," which regulate, or depend upon the relationship between sovereign and subject, do not survive such change, is not questioned. As to the former, the rule is one of practical convenience and necessity, without which a change of jurisdiction would be productive of, at least temporary, chaos.

*American Ins. Co.* v. *Canter*, 1 Pet. (26 U. S.) 511, 541;

*Chicago, Rock Island & Pacific R. R. Co.* v. *McGlinn*, 114 U. S. 542, 546, 547;

*Western Union Telegraph Co.* v. *Chiles*, 214 U. S. 274, 277, 278;

*United States* v. *Uzzeuta*, 261 U. S. at p. 142;

*Halleck, International Law*, Vol. 2, Chap. 34, Sec. 14.

The question is necessarily one of *adoption*. As legislative authority terminates upon loss of jurisdiction, existing laws no longer derive their sanction from the enacting authority. Their effectiveness thereafter must be derived

from the authority of the succeeding sovereign. Hence, the rule regarding "municipal" laws, must rest upon the theory that they were impliedly *adopted* by the new sovereign.

*In re Ladd*, 74 Fed. 31, 38;
*Steele* v. *Halligan*, 229 Fed. 1011, 1018.

a. *Did the United States impliedly adopt it?*

Whether a pre-existing law may be *deemed* adopted is necessarily dependent upon the presumed *intent* of the sovereign. Hence, in the last analysis, the present question is whether the Federal Government *intended*, that in the construction of this post office building, its contractor should be required to comply with that State statute.

The statute,[1] as construed by the highest court of the State, specifies the manner in which and the time when, the floors must be installed in buildings of various types of construction, and requires that each tier of steel be thoroughly planked over, immediately upon its completion.

*Lyles* v. *Terry & Tench Co.*, 227 N. Y. 361, 364, 365;
*Drummond* v. *Alfred E. Norton Co.*, 156 N. Y. App. Div. 126, aff'd (no opinion) 213 N. Y. 670.

In the instant case the steel work had been *completed* and violation of the statute has been predicated upon failure to have a *part* of the *lowest tier* thereof covered. Inferentially, therefore, it has been held that the statute not only required that each tier be planked over upon its completion, but that it be *kept* so planked until the floors were completely filled in.

Any violation of the statute is a penal offense and, in New York City, the Superintendent of Buildings, who is charged with its enforcement, is empowered to supervise the work and, if he deems life or property endangered by its violation, to compel the cessation of all work.

[1] Appendix, p. 17.

Labor Law, Secs. 2(2), 21(9), 241, 242, 651(1);
Penal Law, Sec. 1275 (Consolidated Laws of New York, Chap. 40, Sec. 1275);
*People ex rel. Lærering* v. *Leo*, 112 N. Y. Misc. R. 325.

That the State and its officers would be without authority to thus *enforce* that statute in Federal territory seems clear.

*James* v. *Dravo Contracting Co.*, 302 U. S. 132, 138, 139;
*Boiven* v. *Johnston*, 306 U. S. , 83 L. Ed. (Adv.) 421, 428;
*Oklahoma City* v. *Sanders*, 19 F. Supp. 50, 51, 54, 55, 56, aff'd 94 F. (2d) 323, 326, 327, 328, 329.

As *such* enforcement would necessarily interfere with the *work*, it would also seem to be unauthorized, as to a Federal project, in State territory.

*Arizona* v. *California*, 283 U. S. 423, 451, 452;
*Educational Films Corp.* v. *Ward*, 282 U. S. 379, 388, 389;
*United States* v. *San Francisco Bridge Co.*, 88 Fed. 891, 894, 895.

We submit, therefore, that there is no basis for an assumption that the United States intended to adopt the *enforcement* provisions of that statute, at least with respect to the conduct of its own enterprise.

True, the application made of the statute in this case did not result in any interference with the work. It resulted only in the imposition of civil liability upon appellant. Nevertheless, that liability flows from failure to comply with the statute and is, therefore, an indirect method of enforcing it. Whether *such* enforcement would constitute an unlawful "interference" with a Federal activity conducted in *State* territory need not be now determined.

*Cf. James* v. *Dravo Contracting Co.*, 302 U. S. at pp. 154, 155;

*Educational Films Corp.* v. *Ward*, 282 U. S. at pp. 388, 389.

The question here presented is: May it be assumed that the Federal Government *intended* to adopt a statute, incapable of direct enforcement, which, if complied with, would operate to control, at least in part, the manner in which *its* work must be performed and, in that respect, *supersede* any contrary provisions of *its contract* therefor?

In the instant case that contract specified that "State or Municipal Building Regulations do not apply to work inside the Government's lot lines."[1] The exclusion from evidence of that part of the contract was apparently on that theory (R. 110, 111).

It seems incredible that the government could have *intended* such result, or that it could have intended to produce the "incongruous situation" of having a law "in part effective and in part ineffective, within the area" under its jurisdiction.

*Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315, 319.

We submit, therefore, that a substantial question is presented as to whether the Labor Law was impliedly adopted by the Federal Government, as was decided by the Court below.

b. *Did the Act of Congress of February 1, 1928*[2] *(46 U. S. C. A., Sec. 57) expressly adopt it?*

We know of only one case in which the meaning of that Act was considered.

This Court there held that it did not render the Workmen's Compensation Law of Washington effective in a Federal enclave therein.

*Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315.

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[1] Appendix, p. 25.
[2] Appendix, p. 20.

There the State Law created a monopolistic State compensation insurance administration to which employers were required to make reports and pay assessments. If they complied, their employees' *exclusive* remedy for injury or death was such insurance. If not, the injured employee, or, in case of death, his beneficiaries, was given an action at law for damages. In that case the action was of that nature. This Court held: (a) that the remedy afforded by that statute was not a "right of action" within the meaning of the Act of Congress of February 1, 1928; and (b) that the *purpose* of the Act was to prevent the *abatement* of causes of action for injuries resulting in death.

It is evident, therefore, that this Court interpreted the term "right of action," as used therein, to refer to *remedies* rather than to substantive rights.

That it was intended to merely render the so-called Lord Campbell's Acts of the various States applicable to Federal territory therein, is clearly shown by the statements of its sponsor, the late Senator Walsh of Montana, in explaining it to the Senate (Congressional Record, Vol. 69, Part 2, p. 1486).

Clearly, there is nothing in its provisions to indicate that the Act was intended to apply to the cause of action *created* by such a statute as the New York Labor Law.

**It is respectfully submitted, therefore, that the motion to dismiss or affirm should be denied and jurisdiction of this appeal noted.**

CLARENCE E. MELLEN,
Counsel for Appellant.

# APPENDIX.

## Labor Law (Consolidated Laws of New York, Chap. 31, Sec. 241).

"Sec. 241. PROTECTION OF EMPLOYEES ON BUILDING CONSTRUCTION OR DEMOLITION WORK. All contractors and owners, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

1. If the floors are to be arched between the beams thereof, or if the floors or filling in between the floors are of fireproof material, the flooring or filling in shall be completed as the building progresses.

2. If the floors are not to be filled in between the beams with brick or other fireproof material, the underflooring shall be laid on each story as the building progresses.

3. If double floors are not to be used, the floor two stories immediately below the story where the work is being performed shall be kept planked over.

**4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over to not less than six feet beyond such beams, except spaces seasonably required for proper construction of the iron or steel work, for raising or lowering of material or for stairways and elevator shafts designated by the plans and specifications.**

5. If elevators, elevating machines or hod-hoisting apparatus are used in the course of construction, for the purpose of lifting materials, the shafts or openings in each floor shall be inclosed or fenced in on all sides by a barrier of suitable height, except on two sides which may be used for taking off and putting on materials, and those sides shall

be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edges of such shafts or openings. * * *"

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**The Constitution of the United States (Art. 1, Sec. 8, Clauses 1, 7, 17 and 18).**

"The Congress shall have Power * * * To establish Post Offices and Post Roads; * * * To exercise exclusive Legislation in all cases whatsoever in such district (not exceeding ten Miles square) as may by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings; and

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.".

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**New York "Death" Act (Decedent Estate Law, Sec. 130; Consolidated Laws of New York, Chap. 13, Sec. 130).**

"Sec. 130. Action by executor or administrator for negligence or wrongful act or default causing death of decedent.

The executor or administrator duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, of a decedent who has left him or her surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which,

would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. Such an action must be commenced within two years after the decedent's death. * * *." (Remainder thereof not pertinent.)

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**Decision of Supreme Court, Trial Term (Hon. Harry E. Lewis, Justice), Dated November 30, 1937 R. 122; Not Officially Reported).**

"Sadrakula, as admx., &c. v. James Stewart & Co., Inc., and ano. (corrected)—Action by the plaintiff against the general contractor, James Stewart & Co., Inc., for damages resulting from the death of her husband, an employee of a subcontractor. The proximate cause of the accident which occasioned decedent's death was the failure of the defendant to thoroughly plank over the beams as required by Section 241, subdivision 4 of the Labor Law. The defense of assumption of risk is not maintainable where, as here, the relationship of master and servant did not exist. There was likewise a failure to establish that plaintiff's decedent was guilty of any contributory negligence. I direct judgment in favor of the plaintiff for the sum of $23,125.

LEWIS,
*J. S. C.*"

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**Decision of Appellate Division, Second Department (R. 125; *Sadrakula* v. *James Stewart Co., Inc.*, 254 N. Y. App. Div. 892).**

"Action for damages for the death of plaintiff's decedent as a consequence of a violation by the defendant of Section 241, subdivision 4, Labor Law, in the course of the erection of a Federal post office building.

Judgment for plaintiff unanimously affirmed, with costs. (a) The evidence adequately established that the proximate cause of the decedent's death was defendant's failure to plank

over the steel beams in the western area of the "bay" as required by Section 241, subdivision 4, Labor Law. (b) The labor law provision was in effect at the place of the accident because that statute was enacted prior to the acquisition of the property by the Federal Government. The common law and statutes in effect before the act of cession remain in force until displaced by Congress (Kaufman v. Hopper, 220 N. Y. 184, 187, 115 N. E. 470, and cases cited therein). There has been no action by Congress displacing the Labor Law in respect of this Federal reservation. Such Federal action as has taken place is confirmatory of plaintiff's right to invoke the applicable State statutes (45 Stat. 54, tit. 16, U. S. Code, sec. 457)."

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## Act of Congress of February 1, 1928, Chap. 15 (Title 16, U. S. C. A. [Pocket Supp.], Sec. 457, 45 Stat. 54).

"**Action for death or personal injury within national park or other place under jurisdiction of United States; application of state law.** In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be."

## Article 11 of General Municipal Law (Consolidated Laws of New York, Chap. 24, Secs. 210, 211, 212; L. 1909, Chap. 29, Secs. 210, 211, 212).

"*Sec. 210. United States may acquire land in cities.* The United States is hereby authorized to acquire by condemnation, purchase or gift in conformity with the laws of this state, one or more pieces of land not exceeding two acres in extent, in any city or village of this state, for the purpose of erecting and maintaining thereon a public building for the accommodation of post-offices and other governmental offices and other governmental offices in any such city or village."

"*Sec. 211. Certified copy of transfer to be filed.* Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of this state, certified copies of the record or transfer to the United States of any such pieces of land which had been acquired by the United States for the purposes specified in section two hundred and ten of this article, together with maps and descriptions of such lands by metes and bounds, exclusive jurisdiction, except as provided in section two hundred and twelve, is thereupon ceded to the United States over the lands so described, during the time that the United States shall be or remain the owner thereof."

"*Sec. 212. Jurisdiction of state not affected.* The jurisdiction ceded to the United States as prescribed by this article shall not prevent the execution on the land acquired for the purposes specified in section two hundred and ten of any process civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States thereon."

## Article 4 of the State Law (Consolidated Laws of New York. Chap. 57, Secs. 50 to 57, Inclusive; L. 1909, Sec. 50, as Amended by L. 1922, Chap. 14, and Secs. 51 to 57, Inclusive).

"*Sec. 50. Consent of state to purchase of land and record of conveyances.* The consent of the state of New York is hereby given to the purchase by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate within the boundaries of this state, for the purpose of parade or manoeuver grounds, aviation fields, navy yards and naval stations, or for the purpose of erecting thereon lighthouses, beacons, light-house keepers' dwellings, hospitals, sanatoriums, works for improving navigation, post-offices, custom houses, fortifications, or buildings and structures for the storage, manufacture or production of supplies, ordnance, apparatus or equipment of any kind whatsoever for the use of the army or navy, and any other needful buildings and structures, and all deeds, conveyances or other papers relating to the title thereof shall be recorded in the office of the register, if any, or if not in the office of the county clerk, of the county where the said lands are situated."

"Sec. 51. Proceedings for acquiring title." (Detailed methods by which United States may acquire title when unable to agree with owners, or where owners are unknown, etc. Not pertinent herein.)

"*Sec. 52. Governor may execute deed or release.* Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of state of New York, certified copies of the record or transfer to the United States of any tracts or parcels of land within this state, which have been acquired by the United States for any of the purposes aforesaid, together with maps or plats and

descriptions of such lands by metes and bounds, and a certificate of the attorney-general of the United States that the United States is in possession of said lands and premises for either of the works of purposes aforesaid, under a clear and complete title, the governor of this state is authorized, if he deems it proper, to execute in duplicate, in the name of the state and under its great seal, a deed or release of the state ceding to the United States the jurisdiction of said tracts or parcels of land as hereinafter provided."

"*Sec. 53. Concurrent jurisdiction as to service of process.* The said jurisdiction so ceded shall be upon the express condition that the state of New York shall retain a concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States."

"*Sec. 55. Delivery and filing of deeds and releases.* One of the deeds or releases so executed in duplicate shall be delivered to the duly authorized agent of the United States, and the other deed or release shall be filed and recorded in the office of the secretary of state of New York; and said deed or release shall become valid and effectual only upon such filing and recording in said office."

"*Sec. 56. Statement to be published in session laws.* The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the application of the United States for said deed and a copy of the description of the lands so conveyed or ceded, together with the date of the recording of said deed in the office of the said secretary of state."

"*Sec. 57. Article not to apply to Orange county.* This article shall not apply to the county of Orange."

**State Law. Sec. 37 (Consolidated Laws of New York. Chap. 57. Sec. 37):**

"*Sec. 37. Saving clause.* The adoption of this article shall not be construed to cede to the United States any territory or jurisdiction over any territory not so ceded by the laws repealed by the consolidation of the general laws of the state of which this article is a part, or to change the terms or conditions upon which such cessions were originally made."

**United States Code, Title 40, Sec. 255 (R. S. [2nd Ed., 1878], Sec. 355).**

"**Title to land to be purchased by United States.** No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any customhouse, or other public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. * * *"
(Omitted part not pertinent.)

**Defendant's Exhibit A for Identification (R. 124: Excluded, R. 111; Assignment of Errors, Item 6).**

Contract between James Stewart & Co., Inc., and the United States of America, Treasury Department, Procurement Division, dated November 9, 1931, referred to in paragraph "Second" of the Amended Complaint, in which said James Stewart & Co., Inc., is described as "the contractor," contained the following provisions, among others:

"21. PROTECTION OF PUBLIC AND PROPERTY.—The contractor shall protect all materials and work

whether incorporated in the building or not, against injury from any cause, and shall provide and maintain all necessary guards, lights, etc., for the protection of the public, and he shall comply with all Municipal ordinances which apply to the use of sidewalks and streets or alleys for building operations, but such ordinances do not apply inside of the lot lines. He shall be held responsible for any damage or injury to persons or property which may occur as a result of his fault or negligence in the prosecution of the work."

"2. PERMITS.—The contractor shall without additional expense to the Government obtain all required licenses, permits, etc. This applies to work outside the lot lines, the use of streets and sidewalks, the protection of public and traffic, connections to utility service lines, etc. State or Municipal Building Regulations do not apply to work inside the Government's lot lines."